

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RESERVED

2006 JUL -6 P 4: 09

**JENNIE COURTNEY,
AS ADMINISTRATIX OF THE
ESTATE OF DENNIS COURTNEY,
DECEASED,**

Plaintiff,

V.

ANTHONY CLARK, et al.,

Defendants.

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

CIVIL ACTION NO. : 2:06-CV-600-DRB

CONSENT TO REMOVAL

To the Judges of the United States District Court for the Middle District of Alabama:

COMES NOW Defendant Dickey and Associates, Inc. and hereby consents to the removal of this action from the Circuit Court of Covington County, Alabama, to the United States District Court for the Middle District of Alabama, Northern Division and in support states as follows:

1. On June 2, 2006, an action was commenced against Sheriff Anthony Clark, Jerry Wayne Edgar, Walter Inabinett, Black Creek Integrated Systems, Oscar Roy Doster, James Darren Harnage, Hollis and Span, Inc., Seymour and Lisenby, Inc., Darden Engineers, Inc., Dickey and Associates, Inc., and fictitious defendants 1-200 by the filing of a Complaint in the Circuit Court of Covington County, Alabama, entitled “Jennie Courtney v. Sheriff Anthony Clark, et. al.,” Civil Action No. CV 06-110. (See Defendants’ Notice of Removal, attached hereto as “Exhibit A”)
2. The Summons and Complaint were served on Sheriff Clark on or about June 6, 2006, Deputy Edgar was served on June 9, 2006, and Deputy Inabinett was served on June

10, 2006. In the Complaint, the Plaintiff alleges various state law negligence and wantonness claims. (Id.) The Plaintiff also avers that she is bringing this action “pursuant to 42 U.S.C. § 1983, et seq.” (Complaint at ¶ 14.) The Plaintiff alleges that her deceased’s Fifth and Fourteenth Amendment rights were violated. Id.

3. Unanimity of defendants in requesting removal is not required where inter alia “the removed claim is separate and independent under 28 U.S.C. § 1441(c)”. Retirement Systems of Alabama v. Merrill Lynch & Co., 209 F.Supp.2d 1257, 1262 n.8 (M.D. Ala. 2002). A separate and independent claim is one “within the jurisdiction conferred by section 1331.” 28 U.S.C. § 1441(c). Section 1983 claims fall within the federal question jurisdiction of the Court as they are “civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. Sheriff Clark, Deputy Edgar, and Deputy Inabinett are the only governmental official defendants who could face the Plaintiff’s separate and independent § 1983 claim. Their consent, therefore, is all that is required.
4. Defendants Covington County Sheriff Anthony Clark, Covington County Deputy Sheriff Jerry Edgar, and Covington County Deputy Sheriff Walter Inabinett’s Notice of Removal, desire to exercise their rights under the provisions of Title 28 U.S.C. § 1441(c) to remove this action from the Circuit Court of Covington County, Alabama, in which said action is now pending under the above-styled title.
5. This is a civil action of which the District Courts of the United States have been given original jurisdiction under 28 U.S.C. § 1331 and principles of supplemental jurisdiction under 28 U.S.C. § 1367 affords the right to remove the entire case to this Court.

6. Defendant Dickey and Associates, Inc. consents to removal of this matter by Defendants Covington County Sheriff Anthony Clark, Covington County Deputy Sheriff Jerry Edgar, and Covington County Deputy Sheriff Walter Inabinett. In so doing, Dickey and Associates, Inc. consents to the exercise of jurisdiction by the United States District Court for the Middle District of Alabama, Northern Division over this matter.

WHEREFORE, PREMISES CONSIDERED, Defendant Dickey and Associates, Inc. consent to the removal of this action from the Circuit Court of Covington County, Alabama, to the United States District Court for the Middle District of Alabama, Northern Division.

Respectfully submitted on this 6th day of July, 2006.



ALAN T. HARGROVE (HAR236)
R. BRETT GARRETT (GAR085)
Attorneys for Defendant Dickey and Associates, Inc.

OF COUNSEL:
RUSHTON, STAKELY, JOHNSTON & GARRETT, P.A.
Post Office Box 270
Montgomery, Alabama 36101-0270
(334) 206-3100

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing Notice of Removal by placing a copy of the same in the United States Mail, postage prepaid, upon:

Will G. Phillips, Esq.
J. David Greene, Esq.
Britt V. Bethea, Esq.
Greene & Phillips Attorneys
at Law, L.L.C.
50 N. Florida Street
Mobile, Alabama 36607

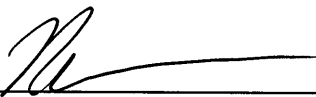
Black Creek Integrated Systems, Inc.
2130 AE Moore Drive
Moody, Alabama 35004-2903

Oscar Roy Doster AIS 177168
P.O. Box 150
Mt. Meigs, Alabama 36057
Hollis and Spann, Inc.
P.O. Box 1530
Dothan, Alabama 36302-1530
Darden Engineers, Inc.
P.O. box 126
Dadeville, Alabama 36853-0126

James Darren Harnage AIS 239251
P.O. Box 150
Mt. Meigs, Alabama 36057
Seymour and Lisenby, Inc.
103 Wisteria Way
Ozark, Alabama 36360-7614

Daryl L. Masters (DLM018)
Gary L. Williford, Jr. (WIL198)
Attorneys for Defendants Covington County Sheriff Anthony Clark, Covington County Deputy
Sheriff Jerry Edgar, and Covington County deputy Sheriff Walter Inabinett.
WEBB & ELEY, P.C.
7475 Halcyon Pointe Drive (36117)
Post Office Box 240909
Montgomery, Alabama 36124
(334) 262-1850 Telephone
(334) 262-1889 Fax

this 6th day of July, 2006.



OF COUNSEL